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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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9 EDDIE ASHLEY,

10 Petitioner,

11 v.

12 MARTIN BITER,^{1/} Warden,

13 Respondent.
14 _____

) Case No. CV 14-1572 DOC (JCG)

) **ORDER ACCEPTING REPORT AND**
) **RECOMMENDATION OF UNITED**
) **STATES MAGISTRATE JUDGE AND**
) **DENYING CERTIFICATE OF**
) **APPEALABILITY**

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16 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the
17 Magistrate Judge's Report and Recommendation, and the remaining record, and has
18 made a *de novo* determination. No objections to the Report and Recommendation
19 have been filed.

20 Accordingly, IT IS ORDERED THAT:

- 21 1. The Report and Recommendation is approved and accepted;
22 2. Judgment be entered denying the Petition and dismissing this action
23 with prejudice; and
24 3. The Clerk serve copies of this Order on the parties.

25 Additionally, for the reasons set forth in the Report and Recommendation, the
26 Court finds that Petitioner has not made a substantial showing of the denial of a
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28 ^{1/} The Court *sua sponte* substitutes Martin Biter as the proper Respondent. See Fed. R. Civ. P.
25(d).

1 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
2 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
3 appealability.

4 Nor is Petitioner entitled to an evidentiary hearing. *See Cullen v. Pinholster*,
5 131 S. Ct. 1388, 1398 (2011) (AEDPA “requires an examination of the state court-
6 decision at the time it was made. It follows that the record under review is limited to
7 the record in existence at that same time *i.e.*, the record before the state court.”).

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9 DATED: January 7, 2015

10 _____ *David O. Carter* _____
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12 HON. DAVID O. CARTER
13 UNITED STATES DISTRICT JUDGE
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